

Attorney Docket #: E6026-500
App. Serial No.: 10/825,516
Art Unit: 3641

REMARKS

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This reply is responsive to the Notices of Non-Compliant Amendment dated September 4, 2007 and July 9, 2007, Advisory Action dated July 11, 2007, and Final Office Action dated April 30, 2007 ("Final Office Action"). Applicant thanks the Examiner for the allowance of claims 7, 10, 11, and 17. Applicant further thanks the Examiner for indication of allowable subject matter in claim 26. Claims 1-6, 8, 12-16, 18, 19, and 22-25 stand rejected as discussed below. Claims 1-19 and 22-26 remain pending in the application. Entry of the amendments and favorable reconsideration of all claims with a view towards allowance is respectfully requested.

RESPONSE TO ADVISORY ACTION

Applicant respectfully submits that the interpretation of United States Patent 5,438,784 to Lenkarski et al. (hereafter "Lenkarski") offered in the Advisory Action and Final Office Action is clearly in error and factually unsupported by a close reading of that reference. In short, the elements of Lenkarski relied upon in making the final rejection simply do not have the structural and functional relationships asserted by the Examiner as explained below. Therefore, Lenkarski does not teach each and every element of Applicant's invention in claims 1-6, 8, 12-16, 18, 19, and 22-25 that is necessary to establish a *prima facie* case of anticipation under 35 U.S.C. § 102. The final rejection of these claims is factually unsupported by the evidence of record. Applicant respectfully requests reconsideration, withdrawal of the rejection, and allowance of all pending claims.

The Final Office Action states that leg 87 of the firing pin 82 corresponds to Applicant's claimed "blocking member" and that sear 30, pivot/swing arm 40, safety lever 20 *et al.*, and

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related components corresponds to Applicant's claimed "actuator" (*see* Final Office Action, pg. 2, para. 3). In reply to Applicant's arguments submitted in its first response on June 22, 2007 to the Final Office Action, and reiterated in the next full section below, the Examiner agrees and concedes in the Advisory Action that element/leg 87 of Lenkarski is part of the firing pin and cannot possibly be the claimed "blocking member" since it is not movable to engage/disengage the firing pin as commonly required by all pending claims. Accordingly, the final rejection of Applicant's pending claims was admittedly unsupported factually by Lenkarski and in error on that basis. At a minimum, therefore, Applicant respectfully requests either allowance of the pending claims or withdrawal of the finality of the last Office Action to continue prosecution and respond to the Examiner's new ground for rejection noted immediately below.

In the Advisory Action, the Examiner now for the first time asserts that sear 30 in Lenkarski is not the claimed "actuator" as stated in the Final Office Action, but instead corresponds to the claimed "blocking member" that engages the firing pin (leg 87). Either pivot/swing arm 40 or safety lever 20 is now asserted to be the claimed "actuator." (*see* Advisory Action). This interpretation of Lenkarski continues to be in error and still fails to factually support a *prima facie* case of anticipation of Applicants pending claims based on Lenkarski.

Safety lever 20 is the only element in Lenkarski that movably responds to insertion/removal of magazine 25 from the pistol¹ as shown in FIG. 2 (*see also* Col. 3, lines 43-65). Safety lever 20 is movable between two positions in which the lever either (1) falls downwards and latches sear pin 32 to arrest movement of sear 30 (shown in solid lines in FIG. 2) and connected trigger mechanism when the magazine is removed, or (2) is pushed upwards and

¹ Pivot/swing arm 40 does not physically enter the magazine well in Lenkarski as shown in FIG. 2, and therefore does not respond to insertion/removal of the magazine.

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unlatches sear pin 32 (shown in dashed/phantom lines in FIG. 2) to allow movement of the sear 30 in a response to a trigger pull for cocking the firing pin and discharging the pistol. Assuming *arguendo* sear 30 and lever 20 corresponds to Applicant's claimed blocking member and actuator, respectively, safety lever 20 ("actuator") neither operates nor is structured to move sear 30 ("blocking member") in any manner whatsoever as expressly required by all of Applicants pending claims. In the absences of a trigger pull, sear 30 always engages leg 87 of the firing pin 82 as shown in FIG. 1 regardless of the presence or absence of a magazine in Lenkarski's pistol. The only aspect that changes is that safety lever 20 either engages or disengages the sear pin 32 when the magazine is removed or inserted, respectively. Accordingly, Applicants invention recited in claims 1-6, 8, 12-16, 18, 19, and 22-25 as variously requiring a firing pin "blocking member" that physically moves into or out of engagement with the firing pin when being acted upon by an "actuator" that movably responds to insertion/removal of the magazine is clearly distinguishable from Lenkarski, as fully explained in the next section below. Lenkarski therefore fails to teach every and every element of Applicants claimed invention. In sum, the Final Office Action fails to establish a prima facie case of anticipation under 35 U.S.C. § 102 based on Lenkarski.

Moreover, the type of mechanism disclosed by Lenkarski falls into the same category of prior art magazine disconnects that disable or lock the trigger mechanism (*i.e.*, trigger cannot be pulled rearward in Lenkarski when safety lever 20 is latched onto sear pin 32) expressly acknowledged in Applicant's Background of the Invention Section (*see* paragraphs 0002 and 0003). These mechanisms, including Lenkarski, can be circumvented by partially pulling the trigger so that sear pin 32 moves slightly rearward of hook 38 in safety lever 20 before ejecting the magazine, thereby defeating the magazine disconnect (*see* Applicant's paragraph 0003).

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Pistols like Lenkarski can therefore still be operated to fire a cartridge remaining in the chamber even with the magazine removed. Applicant's claimed invention advantageously eliminates this problem and provides a magazine safety mechanism that functions independently of the trigger mechanism in contrast to Lenkarski to avoid circumvention of the safety mechanism.

Accordingly, reconsideration and allowance of all pending claims is therefore respectfully requested for the foregoing reasons and those presented below. Alternatively, Applicant respectfully requests withdrawal of the finality of the claim rejections in the Final Office Action to continue prosecution and consideration of the Examiner's new ground of rejection presented for the first time in the Advisory Action.

CLAIMS REJECTIONS /OBJECTIONS

Rejections under 35 U.S.C. § 102(b)

Claims 1-6, 8, 12-16, 18, 19, and 22-25 stand rejected as anticipated by United States Patent 5,438,784 to Lenkarski et al. (hereafter "Lenkarski"). Claims 1, 12, and 22 are independent. This rejection is respectfully traversed for the reasons presented herein and reasons presented in Applicant's prior amendment filed February 5, 2007 in response to a non-final Office Action (hereafter "Non-Final Amendment").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claims 1, 12, and 22 all similarly require a blocking member that directly engages the firing pin and an actuator that is movable in response to removing and inserting the

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magazine. The express limitations of these claims further require that the actuator be responsive to insertion or removal of the magazine from the pistol and interact with the blocking member to engage/disengage the blocking member from the firing pin depending on whether the magazine is absent or present in the pistol. For example, claim 1 requires *inter alia* a blocking member movable into and out of engagement with the firing pin; and an actuator that disengages the blocking member from the firing pin when the magazine is inserted in the pistol and engages the blocking member with the firing pin when the magazine is removed from the pistol so that the firing pin is prevented from moving toward and contacting a cartridge in the chamber. In sum, Lenkarski does not teach or fairly suggest a firing pin blocking mechanism as recited in claim 1.

Claims 12 and 22 contain similar limitations to amended claim 1 with respect to the blocking member and blocking member actuator. As explained below and in the preceding section above, Lenkarski does not teach or fairly suggest a mechanism having each and every one of the foregoing limitations as set forth by independent claims 1, 12, and 22. Therefore, Lenkarski does not anticipate these claims as a matter of law.

The Office Action states that Lenkarski discloses "a blocking member (reference 87) movable into and out of engagement with the firing pin." (Office Action, pg. 2, para. 3.) However, it is respectfully submitted that leg 87 is not movable at all with respect to firing pin 82. As commonly employed in striker-fired type pistol designs, leg 87 actually is a part of striker firing pin 82 that depends downward from the firing pin (See Lenkarski, Col. 3, lines 63-65). Accordingly, leg 87 does not move with respect to the firing pin as alleged in the Office Action and cannot be a blocking member as claimed that is movable to engage/disengage the firing pin. Sear 30 also does not read on the claimed blocking member for the additional reasons

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presented in the preceding section above. Therefore, Lenkarski does not teach or fairly suggest the blocking member limitation of Applicant's independent claims 1, 12, and 22.

Furthermore, as explained in Applicant's Non-Final Amendment filed February 5, 2007 and the foregoing "Response to Advisory Action" section above, safety lever 20 of Lenkarski that movably responds to insertion/removal of the magazine merely engages the sear pin 32 when the magazine is removed to arrest movement of the sear 30 that in turn engages and releases firing pin leg 87 to discharge the pistol via a trigger pull. Assuming *arguendo* that safety lever 20 corresponds to the claimed actuator in Applicant's claims, lever 20 does not move any type of "blocking member" or other element whatsoever into or out engagement with firing pin 82 in response to removal/insertion of the magazine. For example, sear 30 remains in contact with the firing pin regardless of whether the magazine is inserted in or removed from the pistol in the absence of a trigger pull. Accordingly, Lenkarski also does not read on the "actuator" limitation in Applicant's independent claims 1, 12, and 22.

In sum, Lenkarski does not disclose at least the claimed blocking member and actuator elements. Because each and every element of independent claims 1, 12, and 22 are not disclosed by Lenkarski, these claims are not anticipated by Lenkarski as a matter of law. *Verdegaal Bros.*, 814 F.2d at 631. The fact that these claims use the transitional phrase "comprising" as stated in the Office Action (pg. 2, para. 1) does not alter that conclusion. "Comprising is not a weasel word with which to abrogate claim limitations." *Spectrum Int'l, Inc. v. Sterlite Corp.*, 164 F.3d 1372, 1380 (Fed. Cir. 1998). Accordingly, although "a transition term such as 'comprising' does not exclude additional unrecited elements...", *Id.* at 1379-80, Applicant's clear "blocking member" and "actuator" limitations recited in independent claims 1, 12, and 22 cannot be

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ignored by broadly reading Lenkarski to disclose elements and functions which simply are nowhere disclosed by that reference.

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Favorable reconsideration and allowance of independent claims 1, 12, and 22 is respectfully requested. Applicant also respectfully requests favorable reconsideration and allowance of claims 2-6, 8-9, 13-16, 18-19, and 23-26 that variously depend from independent claims 1, 12, and 22, and therefore contain all the limitations of their respective independent claims. These dependent claims should be allowable for at least the same foregoing reasons presented for independent claims 1, 12, and 22, and additional limitations added by this claims which further distinguish over Lenkarski.

Claim Objections

Claim 26 stands objected to as being dependent from a rejected base claim (independent claim 22), but would possibly be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. For the reasons presented above, claim 22 is believed to be allowable. Claim 26 should therefore be allowable based on the allowance of claim 22 from which it depends. Favorable reconsideration and allowance of claim 26 is respectfully requested.

CONCLUSION

In view of the foregoing, Applicant respectfully requests favorable reconsideration and allowance of all pending claims. If the Examiner disagrees with the allowability of the claims, or if there are any remaining issues that may be resolved by telephone to expedite allowance, the

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Examiner is kindly requested to contact the Applicant's undersigned representative at
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Respectfully submitted,

Dated: September 6, 2007

By: 
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